HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition no. 74 (S/S) 2000

1. Prem Ram S/o Sri Bir Ram,
   Resident of 134, Staff House, Mallital, Nainital,
2. Manohar Chandra Joshi S/o Sri Bala Dutt Jushi,
   Resident of Tehsil Quarters,
   Nainital Road Haldwani,
   District Nainital. ----Petitioners.

Vs.

1. State of Uttaranchal, through
   Its Secretary, Civil Secretariat Dehradun,
2. District Magistrate, Nainital,
3. Commissioner, Kumaon Region, Nainital,
4. Hema Sah, Senior Assistant,
   District Magistrate Office, Nainital,
5. Ramesh Chandra Pandey, Senior Assistant,
   District Magistrate Office, Nainital,
6. Suresh Chandra Kandpal, Senior Assistant,
   District Magistrate Office, Nainital,
7. Laxman Singh Rawat, Senior Assistant,
   District Magistrate Officer, Nainital. ----Respondents.

Sri Anil K. Joshi, learned counsel for the petitioners.
Learned Standing Counsel for respondents.
Sri Rajendra Dobhal, learned counsel for respondent nos. 4 to 7.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Anil K. Joshi, learned counsel for the petitioners, learned Standing Counsel for respondent no. 1 to 3 and Sri Rajendra Dobhal, learned counsel for respondent nos. 4 to 7.

By means of this writ petition, the petitioners have challenged the seniority list published by the District Magistrate, Nainital on 23rd June 2000 in respect of Class III employees working in the office of District Magistrate, Nainital.

Submission of the petitioners is that the petitioner no. 1 joined his services as Junior Clerk in the office of District

Magistrate, Nainital on 11.05.1976 and the petitioner no. 2 joined on 17.08.1976 as Junior Clerk. Similarly the respondent no. 4,5,6 & 7 joined the office of District Magistrate on 20.09.1976, 18.09.1976, 21.09.1976 and 08.10.1976 respectively.

A tentative seniority list was prepared by the District Magistrate, Nainital in the year 1991. In the tentative seniority list, the names of the petitioner nos. 1 & 2 find place at serial no. 53 & 54 whereas; the names of respondent nos. 4 to 7 find place at serial no. 55, 56, 57 & 58. against the tentative list objections were invited and after deciding the objection, a final seniority list was published on 27.05.1993. However, this final list was not challenged by either of the petitioners or by the respondent nos. 4 to 7. That all of a sudden, on 23.06.2000 another list was published by the district Magistrate. In that list, the respondent nos. 4 to 7 were placed at serial no. 53, 54, 55 & 56 and the petitioner nos. 1 & 2 have been placed at serial no. 57 & 58.

Contention of the petitioners is that the subsequent seniority list dated 23.06.2000 has been published by the District Magistrate after the seniority list was finalised on 27.05.1993 and the petitioners were not given opportunity of hearing or making objections. The District Magistrate was not justified in modifying the seniority list, which has been published finally.

Against the seniority list which was published on 23.06.2000, the petitioners have already preferred representation before the Commissioner, Kumoun Mandal, Nainital on 22nd July 2000 which is still pending before him. Counsel for the petitioners has submitted that it is a well settled law that the date of joining of service is the relevant date for determination of seniority and not the date of selection on the

post. The petitioner can raise this plea before the Commissioner.

This Court on 26.02.2001 passed an interim order in the writ petition that two posts shall be kept reserved under reserved quota to e filled by promotion. This order has been modified on 19.03.2002 by directing that petitioenr no. 2 shall be treated as general candidate and one seat shall be kept reserved for general candidate.

Since the representation is already pending before the Commissioner, it will be just and proper to direct the Commissioner, Kumoun Mandal, Nainital to decide the same.

Accordingly, the Commissioner, Kumoun Mandal, Nainital is directed to decide the representation of the petitioner, which they have already made on 22nd July 2000 against the seniority list published by the District Magistrate, Nainital on 23.06.2000, within a period of two months from the date of production of a certified copy of this order before him. The interim order passed in the writ petition shall be operative till the decision is taken by the Commissioner on the representation.

With these directions, the writ petition is finally disposed of.

(M.M. Ghildiyal, J.)

July 21, 2005:
NCM: